IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1664 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MINOR NISCHAL KISHOR ACHARAYA

Versus

KAPILRAY BALVANTRAY ACHARYA THRO' PARULBEN W/O DURENDRA

Appearance:

1. Misc.Civil Application No. 1664 of 2004
PARTY-IN-PERSON for Petitioner No. 1-2
RULE SERVED for Respondent No. 1-3,5
MR MINESH C DAVE for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 03/11/2004

ORAL JUDGEMENT

1. Minor Nischal Kishor Acharya through its mother Smt.Kavita @ Heenaben Kishorkumar Acharya, applicant

original plaintiff has filed this application with a prayer that this Court may transfer the Regular Civil Suit No.108 of 2001 from the Court of learned Civil Judge (J.D.), Limbdi, Dist.Surendranagar to the Court of learned Civil Judge, Vadodara.

2. It may be noted that the present applicants had originally filed Regular Civil Suit No.108 of 2001 before the learned Civil Judge (S.D.), Limbdi, Dist.Surendranagar, against the respondents. In the said suit, the plaintiff prayed that there are properties which are mentioned in the plaint and from that property, she claimed maintenance from the said property. The applicants also prayed that the respondents may not alienate or transfer the property in question. The said suit was filed somewhere in October, 2001.

3. It may be noted that the trial court has issued show-cause-notice but did not grant interim relief. With a view to see that the suit of the applicant defeated, the respondent has sold the said property in the middle of the suit.

4. It may be noted that the respondent No.3 Kishorkumar Balvantray Acharya is the husband of plaintiff No.2 and other members are family members of plaintiff No.2. It may be noted that some difference and dispute arose between the husband and wife, the applicant No.2 has also filed an application under Sec.125 of the Code of Criminal Procedure in the court of Learned J.M.F.C., Vadodara, which is pending.

5. It is the case of the applicant that it is not possible for her to appear in Limbdi Court as applicants have no money to go to Limbdi Court at every date. She further stated that as she has already filed application for maintenance, the opponent No.3 will have to come to Vadodara to attend the court in this behalf. In view of the same, she prayed that the suit filed by her and minor before the Limbdi Court i.e. Regular Civil Suit No.108 of 2001 may be transferred to District Court at Vadodara.

6. I have perused the application filed by the applicants. After going through the application and after hearing the applicants, and I have also heard Mr.Dave, learned advocate who is also appearing on behalf of respondent No.4 - Smt.Parulben W/o Durendra Adhyaru, who happens to be sister of Kishorkumar Balvantray Acharya respondent No.3 herein in this case.

7. It may be noted that the respondents namely

Kapilray Balvantray Acharya - respondent No.1, Suryakant Balvantray Acharya - respondent No.2, Kishorkumar Balvantray Acharya - respondent No.3 are served, however they are served through respondent No.4 and they have chosen not to appear before this Court.

8. In view of the same, I am satisfied with the grounds mentioned in the application for transfer of the suit filed by the applicant from Limbdi Court to Vadodara Court. The learned advocate for the respondent No.4 has strongly objected to the same. However, I do not find any substance with the arguments advanced by learned advocate for the respondent No.4. Hence, prayer in terms of para 10(2) is granted.

9. In view of the same, the Regular Suit No.108 of 2001 filed by the present applicants before the learned Civil Judge (J.D.), Limbdi, Dist.Surendranagar, is ordered to be transferred to the Court of learned Civil Judge at Vadodara. After the suit is transferred, the learned trial Judge is requested to dispose of the same as early as possible and in accordance with law.

10. In view of the aforesaid observations and directions, this application is disposed of with no order as to costs. Rule is made absolute.

(K.M. Mehta, J.)

syed/